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12/16/04

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DEC 15 2:00 PM

U.S. DISTRICT COURT
DISTRICT OF MASS.

FALKEN INDUSTRIES, LTD.
and
ROY JANIS
Plaintiffs

v.

Civil Action No. 04-12479 MEL

CHRISTIAN JOHANSEN
and
PATRICK SAUTIN
Defendants

**PLAINTIFFS' OPPOSITION MOTION TO DEFENDANTS' MOTION TO DISMISS AND
OPPOSITION TO THE MOTION TO STAY AND COMPEL ARBITRATION**

Now come the Plaintiffs, Falken Industries, Inc. (hereinafter "Falken") and Roy Janis, and respectfully request this honorable Court to issue an ORDER which DENIES Defendants Motion to Dismiss, Stay the within action and Compel Arbitration. Plaintiffs state that personal jurisdiction is proper in Massachusetts and that this matter should not be dismissed under the doctrine of forum non conveniens.

Plaintiffs will establish that the Defendants have sufficient minimum contacts with Massachusetts and that exercising personal jurisdiction will not violate Due Process. Plaintiffs will also show that Massachusetts is not an inconvenient forum for this litigation. Lastly, Plaintiffs should not be compelled to arbitrate as they are not signatories to an arbitration agreement and that any such agreement was waived when the Defendants commenced their litigation in France. In support thereof, the Plaintiffs submit their Memorandum in support of the within motion.

REQUEST FOR ORAL ARGUMENT

The Plaintiffs believe that oral argument may assist this honorable Court and hereby request a hearing on this Motion pursuant to Local Rule 7.1(d).

WHEREFORE, Plaintiffs respectfully request this honorable Court to issue an ORDER which:

- 1) Denies the Defendants Motion to Dismiss for lack of personal jurisdiction;
- 2) Denies the Defendants Motion to Dismiss for forum non conveniens;
- 3) Denies the Defendants Motion to Stay and Compel Arbitration;
- 4) Assesses all costs against the Defendants;
- 5) If the Court has questions about the exercise of jurisdiction, grant the Plaintiffs discovery covering the scope of jurisdiction until a hearing can be held; and
- 6) Grants all other such relief to the Plaintiffs as the Courts deems just and appropriate.

The Plaintiffs
FALKEN INDUSTRIES, LTD.
and
ROY JANIS

By their attorney

A handwritten signature in black ink, appearing to read 'Carlo Cellai', is written over a horizontal line.

Carlo Cellai, Esq.
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